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[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9555]

RIN 1545-BH94

Graduated Retained Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the portion of property (held in trust or otherwise) includible in the grantor's gross estate if the grantor has retained the use of the property, the right to an annuity, unitrust, graduated retained interest, or other payment from the property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The final regulations will affect estates that file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §20.2036-1(c)(3).

FOR FURTHER INFORMATION CONTACT: Theresa M. Melchiorre at (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On April 30, 2009, proposed regulations (REG-119532-08) were published in the **Federal Register** (74 FR 19913). The proposed regulations provide the method required to determine the portion of trust corpus of a grantor retained annuity or unitrust trust (GRT) that is includible in the grantor's gross estate under section 2036 if the deceased grantor retains an interest described in §25.2702-3(b)(1)(ii)(A) or (b)(1)(ii)(B) or §25.2702-3(c)(1)(ii); that is, the interest retained by the grantor increases annually during the term of the trust (a graduated retained interest). This method would apply to graduated retained interests in transferred property whether or not held in trust.

In addition, the proposed regulations would add §20.2036-1(c)(1)(ii), Example 1, illustrating the amount includible under section 2036 if the decedent transfers property in trust pursuant to the terms of which trust income is payable to the decedent and decedent's child, C, in equal shares during their joint lives and, on the death of the first to die of decedent and C, all trust income is to be paid to the survivor. The proposed regulations also would amend §20.2036-1(b)(1)(ii) to address the method required to determine the amount includible under section 2036 if the decedent and C were entitled to receive annuity interests rather than trust income.

Written comments were received on the proposed regulations. No public hearing was scheduled because no individual or organization requested the opportunity to provide oral comments at a hearing. All comments are available at

www.regulations.gov or upon request. The proposed regulations, with certain changes made in response to the written comments received, are adopted as final regulations.

Summary of Comments and Explanation of Provisions

Section 20.2036-1(b)(1)(ii) – Determining the portion includible if the decedent's retained annuity follows a preceding annuity interest.

Section 20.2036-1(b)(1)(ii) of the proposed regulations provides the method required to compute the amount includible in the decedent's gross estate under section 2036 in a situation where the decedent is to receive a payment (or an increased payment) after the death of another beneficiary who is receiving an annuity or other payment at the time of the decedent's death. If the decedent predeceases the other beneficiary, under the proposed regulations, the amount includible is the greater of: (1) the amount of corpus required to generate sufficient income to pay the annuity payable to the decedent as of the date of death; or (2) the amount of corpus required to produce sufficient income to satisfy the annuity or other payment the decedent would have been entitled to receive if the decedent had survived the other beneficiary, reduced by the present value of the other beneficiary's interest. The amount includible, however, cannot exceed the fair market value of the trust corpus on the date of death.

One commentator opined that this method attributes to the decedent a greater portion of a trust's value than is appropriate, because the method does not take into account any depletion of trust principal that is assumed if the annuity payable to the current recipient is a greater percentage of the trust

corpus than the assumed rate of return based on the applicable section 7520 rate. Alternatively, the commentator proposed that the amount includible under section 2036 should be the sum of: (1) the amount of trust corpus required to produce sufficient income to satisfy the annuity or other payment the decedent was receiving at death; plus the lesser of: (A) the amount of trust corpus required to produce sufficient income to satisfy the additional annuity payable to the decedent if the decedent had survived the current recipient; or (B) the fair market value of the corpus on the date of the decedent's death less the present value of the current recipient's annuity.

The requested approach in the comment was not adopted because it is inconsistent with the existing regulations. The regulations have provided, historically, that if the decedent retained or reserved an interest or right with respect to all or a portion of the property transferred, then the amount includible under section 2036 is the value of the property with respect to which the decedent retained the interest less the value of any outstanding income interest that is not subject to the decedent's retained interest and that is being enjoyed by another person at the time of decedent's death. Nevertheless, once this computation has been completed, a ceiling on the amount includible in the gross estate under section 2036 (specifically, the fair market value of the trust at death) is imposed. The method in the proposed regulations implements this principle. This method has been clarified in the final regulations by providing that, solely for the purpose of calculating the present value of the current recipient's interest in this computation, the exhaustion of trust corpus test described in §20.7520-

3(b)(2) is not to be applied in cases where §20.7520-3(b)(2) would otherwise require it to be applied.

Clarification of §20.2036-1(c)(1)(ii), paragraph (i) of Example 1.

In response to a comment, paragraph (i) of Example 1 in §20.2036-1(c)(1)(ii) has been revised to clarify that the present value of C's outstanding life estate reduces only the 50 percent of trust corpus from which it is payable.

Section 20.2036-1(c)(2)(ii) - Amount includible in the case of a graduated retained interest.

In response to a commentator's request for a detailed example, a step-by-step illustration of the method described in §20.2036-1(c)(2)(ii) (renumbered as §20.2036-1(c)(2)(iii) in the final regulations) has been added in Example 7 of §20.2036-1(c)(2)(iv).

Section 20.2036-1(c)(2) - Inclusion under sections 2036 and 2033.

One commentator requested that the regulations clarify the interaction of sections 2033 and 2036 in a situation where the decedent establishes a GRT under the terms of which the retained interest is paid to the decedent for a specified term of years and, if the decedent dies prior to the expiration of that term, the retained annuity or other payment is to be paid to the decedent's estate for the balance of the term. See for example §25.2702-3(e), Example 5.

The commentator noted that, because all or a portion of the trust corpus is includible in the decedent's gross estate under section 2036, the annuity or other payments that become payable after the decedent's death and are required to be paid to the estate for the remainder of the trust term are reflected in the amount

includible under section 2036, and therefore should not also be includible under section 2033.

The IRS and the Treasury Department agree. To the extent that all or a portion of the trust corpus is includible in the gross estate under section 2036 as a result of the decedent's retained annuity or other interest, double inclusion of the same asset would result if any payment that becomes payable after the decedent's date of death to the estate also is included in the decedent's gross estate under section 2033 as a separate item. Accordingly, §20.2036-1(c)(1)(i) of the regulations has been revised to provide specifically that payments that become payable to the decedent's estate after the decedent's death (as opposed to payments that are payable to the decedent prior to the decedent's death but are not paid until after the decedent's death) are not subject to inclusion under section 2033, if section 2036 is applied to include all or a portion of the trust corpus in the gross estate. This rule is also reflected in §20.2036-1(c)(2)(iv), Example 2 paragraph (ii) and Example 7.

The payments described in the preceding paragraph are to be distinguished, however, from annuity or other payments payable to the decedent prior to the decedent's date of death, but that are not paid until after death. Such payments are includible in the decedent's gross estate under section 2033 as a separate receivable. Thus, such an amount payable by the trust reduces the fair market value of the trust as of the date of death, but is included in the decedent's gross estate under section 2033 as a receivable amount.

Organizational changes to and clarification of §20.2036-1(b) and (c).

In response to comments, the method set forth in §20.2036-1(b)(1)(ii) of the proposed regulations for calculating the amount includible if part or all of the decedent's retained annuity follows an annuity interest payable to another at the time of the decedent's death has been moved to a separate section, §20.2036-1(c)(2)(ii). As a conforming change, paragraph (ii) of Example 1 of §20.2036-1(c)(1)(ii) has been moved and renumbered as Example 8 of §20.2036-1(c)(2)(iv) in the final regulations.

Also in response to a comment, the manner of computing the amount to be included in the decedent's gross estate has been clarified at the end of §20.2036-1(c)(2)(i).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office

of Associate Chief Counsel (Passthroughs and Special Industries), IRS.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 20 is amended as follows:

PART 20--ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2036-1 is amended by:

1. Revising paragraph (b)(1)(ii).
2. Adding two sentences at the end of paragraph (c)(1)(i).
3. Adding paragraph (c)(1)(ii) Example 1.
4. Removing the third sentence of paragraph (c)(2)(i) and adding three new sentences in its place.
5. Redesignating paragraphs (c)(2)(ii) and (c)(2)(iii) as paragraphs (c)(2)(iii) and (c)(2)(iv), respectively.
6. Adding new paragraph (c)(2)(ii) and text to newly-designated paragraph (c)(2)(iii).
7. Revising the introductory text of and adding Example 7 and Example 8 to newly-designated paragraph (c)(2)(iv).
8. Adding two sentences at the end of paragraph (c)(3).

The revisions and additions read as follows:

§20.2036-1 Transfers with retained life estate.

* * * * *

(b) * * * (1) * * *

(ii) A decedent reserved the right to receive the income, annuity, or other payment from transferred property after the death of another person who was in fact enjoying the income, annuity, or other payment at the time of the decedent's death. In such a case, the amount to be included in the decedent's gross estate under this section does not include the value of the outstanding interest of the other person as determined in paragraphs (c)(1)(i) and (c)(2)(ii) of this section. See also, paragraphs (c)(1)(ii) Example 1 and (c)(2)(iv) Example 8 of this section. If the other person predeceased the decedent, the reservation by the decedent may be considered to be either for life, or for a period that does not in fact end before death.

* * * * *

(c) * * *

(1) * * *

(i) * * * If this section applies to an interest retained by the decedent in a trust or otherwise and the terms of the trust or other governing instrument provide that, after the decedent's death, payments the decedent was receiving during life are to continue to be made to the decedent's estate for a specified period (as opposed to payments that were payable to the decedent prior to the decedent's death but were not actually paid until after the decedent's death), such payments

that become payable after the decedent's death are not includible in the decedent's gross estate under section 2033 because they are properly reflected in the value of the trust corpus included under this section. Payments that become payable to the decedent prior to the decedent's date of death, but are not paid until after the decedent's date of death, are includible in the decedent's gross estate under section 2033.

(ii) * * *

Example 1. Decedent (D) creates an irrevocable inter vivos trust. The terms of the trust provide that all of the trust income is to be paid to D and D's child, C, in equal shares during their joint lives and, on the death of the first to die of D and C, all of the trust income is to be paid to the survivor. On the death of the survivor of D and C, the remainder is to be paid to another individual, F. Subsequently, D dies survived by C. Fifty percent of the value of the trust corpus is includible in D's gross estate under section 2036(a)(1) because, under the terms of the trust, D retained the right to receive one-half of the trust income for D's life. In addition, the excess (if any) of the value of the remaining 50 percent of the trust corpus, over the present value of C's outstanding life estate in that 50 percent of trust corpus, also is includible in D's gross estate under section 2036(a)(1), because D retained the right to receive all of the trust income for such time as D survived C. If C had predeceased D, then 100 percent of the trust corpus would have been includible in D's gross estate.

* * * * *

(2) * * *

(i) * * * The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained use or retained annuity, unitrust, or other payment (without reducing or invading principal). In the case of a retained annuity or unitrust, the portion of the trust's corpus includible in the decedent's gross estate is that portion of the trust corpus necessary to generate sufficient income to satisfy the retained annuity or unitrust (without reducing or invading

principal), using the interest rates provided in section 7520 and the adjustment factors prescribed in §20.2031-7 (or §20.2031-7A), if applicable. The computation is illustrated in paragraph (c)(2)(iv), Examples 1, 2, and 3 of this section. * * *

(ii) Decedent's retained annuity following a current annuity interest of another person. If the decedent retained the right to receive an annuity or other payment (rather than income) after the death of the current recipient of that interest, then the amount includible in the decedent's gross estate under this section is the amount of trust corpus required to produce sufficient income to satisfy the entire annuity or other payment the decedent would have been entitled to receive if the decedent had survived the current recipient (thus, also including the portion of that entire amount payable to the decedent before the current recipient's death), reduced by the present value of the current recipient's interest. However, the amount includible shall not be less than the amount of corpus required to produce sufficient income to satisfy the annuity or other payment the decedent was entitled, at the time of the decedent's death, to receive for each year. In addition, in no event shall the amount includible exceed the value of the trust corpus on the date of death. Finally, in calculating the present value of the current recipient's interest, the exhaustion of trust corpus test described in §20.7520-3(b)(2) (exhaustion test) is not to be applied, even in cases where §20.7520-3(b)(2) would otherwise require it to be applied. The following steps implement this computation.

(A) Step 1: Determine the fair market value of the trust corpus on the

decedent's date of death.

(B) Step 2: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment (determined on the date of the decedent's death) payable to the decedent for the trust year in which the decedent's death occurred.

(C) Step 3: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment that the decedent would have been entitled to receive for each trust year if the decedent had survived the current recipient.

(D) Step 4: Determine the present value of the current recipient's annuity, unitrust, or other payment (without applying the exhaustion test).

(E) Step 5: Reduce the amount determined in Step 3 by the amount determined in Step 4, but not to below the amount determined in Step 2.

(F) Step 6: The amount includible in the decedent's gross estate under this section is the lesser of the amounts determined in Step 5 and Step 1.

(iii) Graduated retained interests--(A) In general. For purposes of this section, a graduated retained interest is the grantor's reservation of a right to receive an annuity, unitrust, or other payment as described in paragraph (c)(2)(i) of this section, payable at least annually, that increases (but does not decrease) over a period of time, not more often than annually.

(B) Other definitions--(1) Base amount. The base amount is the amount of corpus required to generate the annuity, unitrust, or other payment payable for

the trust year in which the decedent's death occurs. See paragraph (c)(2)(i) of this section for the calculation of the base amount.

(2) Periodic addition. The periodic addition in a graduated retained interest for each year after the year in which decedent's death occurs is the amount (if any) by which the annuity, unitrust, or other payment that would have been payable for that year if the decedent had survived exceeds the total amount of payments that would have been payable for the year immediately preceding that year. For example, assume the trust instrument provides that the grantor is to receive an annual annuity payable to the grantor or the grantor's estate for a 5-year term. The initial annual payment is \$100,000, and each succeeding annual payment is to be 120 percent of the amount payable for the preceding year. Assuming the grantor dies in the second year of the trust (whether before or after the due date of the second annual payment), the periodic additions for years 3, 4, and 5 of the trust are as follows:

	(1) Annual <u>Payment</u>	(2) Prior Year <u>Payment</u>	(1 - 2) Periodic <u>Addition</u>
Year 3	144,000	120,000	24,000
Year 4	172,800	144,000	28,800
Year 5	207,360	172,800	34,560

(3) Corpus amount. For each trust year in which a periodic addition occurs (increase year), the corpus amount is the amount of trust corpus which, starting from the decedent's date of death, is necessary to generate an amount of income sufficient to pay the periodic addition, beginning in the increase year and continuing in perpetuity, without reducing or invading principal. For each

year with a periodic addition, the corpus amount required as of the decedent's date of death is the product of two factors: the first is the result of dividing the periodic addition (adjusted for payments made more frequently than annually, if applicable, and for payments due at the beginning, rather than the end, of a payment period (see Table K or J of §20.2031-7(d)(6)) by the section 7520 rate (periodic addition / rate)); and the second is 1 divided by the sum of 1 and the section 7520 rate raised to the T power ($1 / (1 + \text{rate})^T$). The second factor applies a present value discount to reflect the period beginning with the date of death and ending on the last day of the trust year immediately before the year for which the periodic addition is first payable.

(i) The corpus amount is determined as follows:

$$\frac{(\text{Periodic Addition}) \times (\text{Adjustment Factor})}{\text{Section 7520 Rate}} \times \frac{1}{(1 + \text{Section 7520 Rate})^T}$$

(ii) The adjustment factor, if applicable, is the factor for payments made more frequently than annually and for payments due at the beginning, rather than the end, of a calendar period (see Table K or J of §20.2031-7(d)(6)). T equals the time period in years from the decedent's date of death through the last day of the trust year immediately before the year for which the periodic addition is first payable.

(C) Amount includible. The amount includible in the gross estate in the case of a graduated retained interest is the sum of the base amount and the corpus amount for each year for which a periodic addition is first payable. The sum of these amounts represents the amount of trust principal that would be necessary to generate the annual payments that would have been paid to the

decedent if the decedent had survived and had continued to receive the graduated retained interest. The amount of trust corpus includible in a decedent's gross estate under this section, however, shall not exceed the fair market value of the trust corpus on the decedent's date of death. The provisions of this section also apply to graduated retained interests in transferred property not held in trust.

(iv) Examples. The application of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section is illustrated in the following examples:

* * * * *

Example 7. (i) On November 1, year N, D transfers assets valued at \$2,000,000 to a GRAT. Under the terms of the GRAT, the trustee is to pay to D an annuity for a 5-year term that is a qualified interest described in section 2702(b). The annuity amount is to be paid annually at the end of each trust year, on October 31st. The first annual payment is to be \$100,000. Each succeeding payment is to be 120 percent of the amount paid in the preceding year. Income not distributed in any year is to be added to principal. If D dies during the 5-year term, the payments are to be made to D's estate for the balance of the GRAT term. At the end of the 5-year term, the trust is to terminate and the corpus is to be distributed to C, D's child. D dies on January 31st of the third year of the GRAT term. On the date of D's death, the value of the trust corpus is \$3,200,000, the section 7520 interest rate is 6.8 percent, and the adjustment factor from Table K of §20.2031-7 is 1.0000. D's executor does not elect to value the gross estate as of the alternate valuation date pursuant to section 2032.

(ii) The amount includible in D's gross estate under section 2036(a)(1) as described in paragraph (c)(2)(iii)(C) of this section is determined and illustrated as follows:

<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>
GRAT Year	Annual Annuity Payment	Periodic Addition	Required Principal: $C \times \text{Adj. Factor} / 0.068$	Deferral Period: Death to GRAT Year	Present Value Factor: $1/(1+.068)^E$	Corpus or Base Amount At Death: $D \times F$
3	144,000	n/a	2,117,647	n/a	n/a	2,117,647
4	172,800	28,800	423,529	0.747945	0.951985	403,193
5	207,360	34,560	508,235	1.747945	0.891372	453,026
					Total:	2,973,866

(iii) Specifically:

(A) Column A. First, determine the year of the trust term during which the decedent's death occurs, and the number of subsequent years remaining in the trust term for which the decedent retained or reserved an interest. In this example, D dies during year 3, with two additional years remaining in the term.

(B) Column B. Under the formula specified in the trust, the annuity payment to be made on October 31st of the 3rd year of the trust term is \$144,000. Using that same formula, determine the annuity amounts for years 4 and 5.

(C) Column C. Determine the periodic addition for year 4 and year 5 by subtracting the annuity amount for the preceding year from the annuity amount for that year; the periodic addition for that year is the amount of the increase in the annuity amount for that year.

(D) Columns D through G for year 3. For the year of the decedent's death (year 3), determine the principal required to produce the annuity amount (Column D) by multiplying the annuity amount (Column B) by the adjustment factor (in this case 1.0000) and by dividing the product by the applicable interest rate under section 7520. Because this is the year of decedent's death and reflects the annuity amount payable to the decedent in that year, there is no deferral, so this is also the Base Amount (the amount of corpus required to produce the annuity for year 3) (Column G).

(E) Columns D through G for years 4 and 5. For each succeeding year of the trust term during which the periodic addition will not be payable until a year subsequent to the year of the decedent's death, determine the principal required to produce the periodic addition payable for that year (Column D) by multiplying the periodic addition (Column C) by the adjustment factor and by dividing the product by the applicable interest rate under section 7520. Compute the factors to reflect the length of the deferral period (Column E) and the present value (Column F) as described in paragraph (c)(2)(iii)(B)(3) of this section. Multiply the amount of corpus in Column D by the factors in Columns E and F to determine the Corpus Amount for that year (Column G).

(F) Column G total. The sum of the amounts in Column G represents the total amount includable in the gross estate (but not in excess of the fair market value of the trust on the decedent's date of death).

(iv) An illustration of the amount of trust corpus (as of the decedent's death) necessary to produce the scheduled payments is as follows:

		Year 3	Year 4	Year 5	Corpus Amount
2 nd Periodic	\$34,560	Deferral period		\$453,026	\$453,026

Addition				
1 st Periodic Addition	\$28,800	Deferral period	\$403,193	\$403,193
Annuity in year of death	\$144,000		\$2,117,647	\$2,117,647
Total amount (sum) included in gross estate				\$2,973,866

(v) A total corpus amount (as defined in paragraph (c)(2)(iii)(B)(3) of this section) of \$2,973,866 constitutes the principal required as of decedent's date of death to produce (without reducing or invading principal) the annual payments that D would have received if D had survived and had continued to receive the retained annuity. Therefore, \$2,973,866 of the trust corpus is includible in D's gross estate under section 2036(a)(1). The remaining \$226,134 of the trust corpus is not includible in D's gross estate under section 2036(a)(1). The result would be the same if D's retained annuity instead had been payable to D for a term of 5 years, or until D's prior death, at which time the GRAT would have terminated and the trust corpus would have become payable to another.

(vi) If, instead, D's annuity was to have been paid on a monthly or quarterly basis, then the periodic addition would have to be adjusted as provided in paragraph (c)(2)(iii)(B)(3) of this section. Specifically, in Column D of the Table for years 4 and 5 in this example, the amount of the principal required would be computed by multiplying the periodic addition by the appropriate factor from Table K or J of §20.2031-7(d)(6) before dividing as indicated and computing the amounts in Columns E through G. In addition, Column D in year 3 also would have to be so adjusted. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained interest. See §20.2039-1(e).

Example 8. (i) D creates an irrevocable inter vivos trust. The terms of the trust provide that an annuity of \$10,000 per year is to be paid to D and C, D's child, in equal shares during their joint lives. On the death of the first to die of D and C, the entire \$10,000 annuity is to be paid to the survivor for life. On the death of the survivor of D and C, the remainder is to be paid to another individual, F. Subsequently, D dies survived by C. On D's date of death, the fair market value of the trust is \$120,000 and the section 7520 rate is 7 percent. At the date of D's death, the amount of trust corpus needed to produce D's annuity interest (\$5,000 per year) is \$71,429 (\$5,000/0.07). In addition, assume the present value of C's right to receive \$5,000 annually for the remainder of C's life is \$40,000. The portion of the trust corpus includible in D's gross estate under section 2036(a)(1) is \$102,857, determined as follows:

(ii) Step 1: Fair market value of corpus.

\$120,000

(iii) <u>Step 2</u> : Corpus required to produce D's date of death annuity ($\$5,000/0.07$).	\$71,429
(iv) <u>Step 3</u> : Corpus required to produce D's annuity if D had survived C ($\$10,000/0.07$).	\$142,857
(v) <u>Step 4</u> : Present value of C's interest.	\$40,000
(vi) <u>Step 5</u> : The amount determined in Step 3, reduced by the amount determined in Step 4, but not to below the amount determined in Step 2 ($\$142,857 - \$40,000$, but not less than \$71,429).	\$102,857
(vii) <u>Step 6</u> : The lesser of the amounts determined in Steps 5 and 1 (\$102,857 or \$120,000).	\$102,857.

(3) Effective/applicability dates. * * * All but the last two sentences at the end of paragraph (c)(1)(i) of this section are applicable to the estates of decedents dying after August 16, 1954. The first, second, and sixth sentences in paragraph (c)(2)(i) of this section and all but the introductory text, Example 7, and Example 8 of paragraph (c)(2)(iv) of this section are applicable to the estates of decedent's dying on or after July 14, 2008. Paragraph (b)(1)(ii) of this section, the last two sentences at the end of paragraph (c)(1)(i) of this section, Example 1 of paragraph (c)(1)(ii) of this section, the third, fourth, and fifth sentences in paragraph (c)(2)(i) of this section; paragraph (c)(2)(ii) of this section; paragraph (c)(2)(iii) of this section; and the introductory text, Example 7, and Example 8 of paragraph (c)(2)(iv) of this section are applicable to the estates of decedents dying on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: October 27, 2011

Emily S. McMahon

Acting Assistant Secretary of the Treasury (Tax Policy).

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